

Shoreline City Clerk

Receiving #  
1508

I-01-014

Seattle City Light

**FILED**

JUL 11 2001

CITY CLERK  
CITY OF SHORELINE**MASTER POLE ATTACHMENT AGREEMENT****CITY OF SHORELINE**

Clerk's Receiving

No: 1508

Date: 7/11/01

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## Master Pole Attachment Agreement

This Agreement, dated as of July 11, 2001, is made by and between the City of Seattle, a municipal corporation of the State of Washington (hereinafter referred to as "City Light"), and the City of Shoreline (hereinafter referred to as "Company").

City Light and Company agree as follows:

### SECTION 1. SCOPE

This Agreement governs all attachments of Company's cable/wire distribution system, including but not limited to fiber optic, coaxial cable and related equipment ("Equipment") now or hereafter made to City Light's utility poles (individually a "pole", collectively, the "poles"), with or without City Light's consent. This agreement does not apply to wireless equipment.

### SECTION 2. ISSUANCE OF PERMIT

City Light agrees that Company may, subject to issuance of individual permits ("permit") as herein set forth, make use of poles and other facilities, partially or wholly owned and maintained by City Light for the purpose of maintaining wires thereon for the transmission of any lawful communications and for no other purpose.

### SECTION 3. ATTACHMENT

- 3.1 If Company desires to attach any Equipment to any City Light pole, Company shall submit to City Light a written application ("Application") substantially in the form of the attached Application and Permit (Appendix B.) Each Application shall describe in detail:
- (a) the Equipment to be attached;
  - (b) the poles affected by the attachment;
  - (c) the amount of space desired on each pole affected by the attachment;
  - (d) the proposed location of the Equipment on the affected poles; and
  - (e) the action that Company intends to take to accommodate any additional strain that will be imposed upon the affected poles by the attachment.
- 3.2 Each such application shall also include working sketches or maps on which each pole to be contacted is correctly identified and such other information (for example, with regard to the proposed nature, appearance, circuit arrangement and line sags of the

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equipment) as City Light may request. City Light pole records and maps are available for checking.

- 3.3 City Light recognizes that time is of the essence and will make a good faith effort to process applications in an expeditious manner.

### **SECTION 4. FEES**

- 4.1 Company shall pay City Light fees for the attachment of Equipment to the poles at the current annual rate (the "Annual Rate") according to Appendix A. This rate may be changed by ordinance.
- 4.2 Such fees shall commence on the effective date of such permit and shall be for the balance of the then calendar year.
- 4.3 City Light shall invoice Company for the payments annually. Company shall pay each such invoice within thirty (30) days after Company's receipt thereof.
- 4.4 Company shall submit annually to City Light an inventory listing the number of poles Company has made attachments to and the locations of such poles. This inventory shall be effective from January 1 of each year and shall be submitted to City Light no later than February 1 of each year. Any attachments not identified in such inventory shall be billed at three times the current annual rate. In the event that Company fails to submit an inventory, Company shall pay City Light, in addition to the current annual rates, all costs associated with City Light having to perform an inventory of Company's attachments to poles.

### **SECTION 5. REIMBURSEMENT**

Company shall reimburse City Light within thirty (30) days after receipt of invoice for all amounts paid and costs incurred by City Light at Company's expense under Paragraphs 7.2, 9.3, and 9.4, and Sections 8 and 10 of this Agreement.

### **SECTION 6. LATE CHARGES AND INTEREST**

Company acknowledges that late payment of any fee or other amounts due to City Light under this Agreement will cause City Light to incur certain administrative, processing and accounting costs not otherwise contemplated by this Agreement, the exact amount of which will be extremely difficult, if not impossible, to ascertain. Accordingly, if any fee or other amounts shall not be received by City Light within thirty (30) days after such amounts shall first become due, after 10 days written notice to Company, Company shall pay to City Light interest, compounded daily, at the rate of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to City

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Light when due under this Agreement, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Agreement by Company.

### **SECTION 7. TERM**

- 7.1 This Agreement shall continue in effect for a period of ten (10) years from the date hereof, and thereafter as mutually negotiated by the parties to this Agreement. Notwithstanding the foregoing, after expiration of the initial ten (10) year term, this Agreement may be terminated by either party at any time upon written notice given not less than one hundred eighty (180) days.
- 7.2 Upon termination of the term, Company shall promptly remove all Equipment from the poles and surrender all facilities. If Company shall fail to promptly remove the Equipment upon termination of the term, City Light may, after sixty (60) days' advance notice to Company of its intent to do so, remove and dispose of the Equipment at Company's expense. Company shall receive credit for unused portions of the permit fee if the termination is effective before the end of the billing period.

### **SECTION 8. REQUIREMENTS FOR ATTACHMENT**

Attachments made by Company to City Light facilities under this Agreement shall not disturb or conflict with the equipment of City Light. Moving, rearranging, or adjustment of City Light's facilities to provide space to accommodate Company's attachments shall be done by City Light at the expense of Company.

- (a) If space is not available for Equipment of Company, no use permit for such facility shall be issued. However, City shall provide Company non-discriminatory access to any pole unless there is insufficient capacity or for reasons of safety or reliability.
- (b) Attachments are to be made only as approved by City Light, and shall be in accordance with requirements of the State of Washington Electrical Construction Code, State of Washington Administrative Code (Chapter 296-44), National Electric Safety Code, City Ordinance 116633 and any applicable City of Seattle codes as now in force and as revised or changed in the future.

### **SECTION 9. PERFORMANCE OF WORK**

- 9.1 The attachment, maintenance, repair, relocation and removal of equipment and other work performed in connection with this Agreement or the attachment of Equipment to poles is sometimes collectively referred to herein as the "Work".
- 9.2 Company shall perform the Work in a workmanlike and skillful manner and comply in full with Chapters 296-44 Washington Administrative Code, Electrical Construction

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Code. Company shall ensure that the Work and the Equipment are in all respects (i) safe, (ii) of first-class quality, (iii) free from all faults and defects in workmanship, material, and design, and (iv) in conformance with the requirements of this Agreement.

- 9.3 Company shall promptly and satisfactorily correct or replace any work or Equipment found to be defective or not in conformity with the requirements of this Agreement (including, but not limited to, the requirements of Section 8 and Paragraph 9.2). If Company fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, City Light may perform such Work and make such corrections and replacements at Company's expense.
- 9.4 Company shall, at all times, keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, Company shall promptly remove all rubbish, refuse and other debris and all of its equipment and surplus materials. If Company fails to do so, City Light may perform such work at Company's expense.

### **SECTION 10. GUYS**

Unless otherwise directed by City Light, Company shall install guys and anchors necessary to support the additional strain imposed on any pole by attachment of the Equipment. If City Light installs or replaces guys or anchors to support the strain imposed by attachment of the Equipment, Company shall reimburse City Light on demand for the entire cost of such installation or replacement (including, but not limited to, the cost of installing or transferring guys to such anchors).

### **SECTION 11. MAINTENANCE**

Company shall maintain all Equipment attached to any pole in good and safe condition and state of repair.

### **SECTION 12. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES**

Changes in location or attachment of Company's Equipment as required by City Light due to the pole being relocated, replaced, or removed shall be made by Company at Company's own expense within thirty (30) days after receiving written notice. City Light shall use its best efforts to avoid any such relocation, replacement, or removal and any interruption in Company's business.

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### **SECTION 13. UNDERGROUND**

If City Light plans to install its electrical distribution system underground in an area and if Company serves or has potential for serving such area, Company shall cooperate with City Light in the planning, engineering, and underground installation of the Equipment.

### **SECTION 14. RELEASE, INDEMNITY AND HOLD HARMLESS**

- 14.1 Company releases and shall defend, indemnify and hold harmless City Light, its successors and assigns, and the respective directors, officers, employees and agents of City Light and its successors and assigns (collectively referred to as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with the attachment of any Equipment to any pole, the performance of any work, the operation of any Equipment, or the Company's system, or the acts or omissions of Company or any of its suppliers or contractors of any tier, the respective successors and assigns of Company or any such suppliers or contractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on Company's behalf in connection with said attachment of Equipment, performance of Work, or operation of Equipment or Company's system unless caused by the negligence or intentional acts of the indemnitees.
- 14.2 Such indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of persons, including officers, agents, and employees of either party hereto including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed to by the erection, maintenance, presence, use or removal of Company's attachments or by the proximity of the respective cables, wires, apparatus and appliances of Company including any claims or demands of customers of the Company with respect thereto.
- 14.3 City Light shall not be liable to the Company or to the Company's customers, and the Company hereby indemnifies, protects and saves harmless City Light against any and all such claims or demands, suit or judgment for loss, liability, damages and expense by the Company's customers, for any interruption to the service of the Company, or for interference with the operation of the cables, wires, and appliances of the Company, or for interference with the operation of the cables, wires, and appliances of the Company unless caused by the negligence or intentional acts of City.
- 14.4 To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply to and for the benefit of the Indemnitees. If it is determined that RCW 4.24.115 applies to this Agreement, the Company agrees to defend,

## **Master Pole Attachment Agreement**

indemnify and hold harmless the Indemnitees to the maximum extent permitted thereunder, and specifically for the Company's negligence concurrent with that of the Indemnitees to the full extent of the Company's negligence.

- 14.5 City Light is willing to permit attachments of the Equipment to the poles for the fees described in Section 4 only in consideration of and in reliance upon such release, indemnity and hold harmless.

### **SECTION 15. WORKER'S COMPENSATION, INSURANCE AND BONDS**

- 15.1 Company shall ensure that, with respect to all persons performing the Work, Company or its suppliers or contractors maintain in effect at all times during the term coverage or insurance in accordance with the applicable laws relating to worker's compensation and employer's liability (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. Company shall furnish to City Light such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as City Light may request.
- 15.2 Company shall obtain, and maintain continuously for the term of this Agreement, at its own expense, occurrence form Commercial General Liability insurance with endorsements and/or other insurance to indemnify for the activities and services of this Agreement. Minimum limit of coverage shall be \$1,000,000 each occurrence and in the aggregate. The insurance carrier issuing the policy must have an A.M. Best rating of at least A-:VII and be legally admitted and licensed to do business in the State of Washington.

Such insurance shall be endorsed to include the City of Seattle, its directors, officers, employees and agents and joint users as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City.

Such insurance shall include a "cross liability", "severability of interests", or "separation of insureds" clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom the claim is made or suit is brought.

Prior to commencement of performance of any of the Work, the Company shall provide the City either:



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a duplicate (photocopy or facsimile acceptable) of the insurance policy with its endorsements as evidence of coverage, or

Declaration pages, including policy face, coverage page, and list of forms endorsement, or

a letter from Company's insurance broker outlining carrier, limits, coverage, terms, and that it meets the requirements under the contract, along with the certificate of insurance and additional insured endorsement.

The company or companies issuing such insurance and the policies issued shall be subject to approval by the City.

- 15.3 The Company shall promptly advise City Light Distribution Engineering of all claims relating to damage to property or injury to or death of persons arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of the Company's equipment. Copies of all accident or other reports made to any insurer by the Company shall be furnished to City Light.
- 15.4 Company shall also furnish City Light with such additional assurance and evidence of such insurance (reference section 15.2) as City Light may from time to time reasonably request. Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Agreement, Company shall deliver to City Light a Certificate of Insurance acceptable to City Light with respect to any replacement policy.
- 15.5 Company shall ensure that any policies of insurance that Company or any of its suppliers or contractors of any tier carry as insurance against property damage or against liability for personal injury (including death) shall include a provision therein providing a waiver of the insurer's right to subrogation against the indemnitees. To the extent permitted by its insurance policies, City Light hereby waives all rights of subrogation against Company, its successors and assigns, and the respective directors, officers, employees and agents of Company and its successors and assigns.
- 15.6 The requirements of this Agreement as to insurance and acceptability to City Light of insurers and insurance to be maintained by Company are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by Company under this Agreement.
- 15.7 In addition, Company shall furnish to City Light, at such times and in such forms as City Light may in writing request, surety bonds with performance, payment and maintenance clauses payable to City Light.

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- 15.8 All the requirements of the Section 15 may be met by the Company's membership in the Washington Cities Insurance Authority (a municipal liability insurance pool).

### **SECTION 16. PERMITS**

Company shall obtain and comply (and shall ensure that the Equipment, the Work, and all of Company's suppliers and contractors of any tier comply) with all permits, licenses, franchises, rights-of-way, easements, and other rights required to perform the Work and operate the equipment and the Company's system in accordance with this Agreement. Company shall furnish to City Light such evidence thereof (such as certified copies of permits, licenses, franchises, rights-of-way, and easements) as City Light may request.

### **SECTION 17. EASEMENTS**

- 17.1 This Agreement shall not be construed as requiring City Light to obtain any easement for the benefit of the Company.
- 17.2 Company shall secure from property owners any easement necessary to cross private property in order to connect to said poles.

### **SECTION 18. COMPLIANCE WITH LAWS**

- 18.1 In the performance of the Work and this Agreement, Company shall comply (and shall ensure that the Equipment, the Work, and all of Company's suppliers and contractors of any tier comply) with all applicable:
- (a) laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now or hereafter in effect, of any governmental authority;
  - (b) industry standards and codes; and
  - (c) City Light's construction guidelines, specifications, rules, and regulations which apply to Company's Work will be provided by City Light to Company on request.

Company shall furnish such documents as may be reasonably required to effect or evidence compliance. All laws, regulations, and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference.

### **SECTION 19. NONWAIVER**

The failure of City Light to insist upon or enforce strict performance by Company of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any

## **Master Pole Attachment Agreement**

such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

### **SECTION 20. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

Company shall not assign, transfer, or otherwise dispose of any of the privileges granted under this Agreement without the written consent of City Light, which consent shall not be unreasonably withheld.

### **SECTION 21. SURVIVAL**

The obligations imposed on Company under Sections 4, 5, 6, 14, 19, 20, 21, 22, and 23, and Paragraph 7.2, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

### **SECTION 22. ENTIRE AGREEMENT**

- 22.1 The entire Agreement shall consist of the general terms and conditions contained in this Agreement and Appendices A, B, and E issued concurrent with the execution of this Agreement and any amendments to this Agreement.
- 22.2 The rights and obligations of the parties hereunder shall be subject to and governed by this Agreement. This Agreement sets forth the entire agreement of the parties, and supersedes any and all prior agreements, with respect to the attachment of the Equipment to the poles.
- 22.3 This Agreement may not be amended or otherwise modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both parties.
- 22.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

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### SECTION 23. APPLICABLE LAW

This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington.

#### Company

Date Signed: 7/11/01

Address: City of Shoreline

17544 Midvale Ave. N  
Shoreline, WA 98133

City Light

Attest: Carol M. Shul

By: [Signature]

Title: City Manager

**Approved as to form:**

[Signature]  
**Shoreline City Attorney**

Date Signed 6-22-01

Address: SEATTLE CITY LIGHT

700 FIFTH AVE. SUITE 3300  
SEATTLE WA. 98104-5031

ELIZABETH A. TOBIN

By: [Signature]

Title: DIRECTOR

## **Master Pole Attachment Agreement**

### **APPENDIX A**

#### **POLE ATTACHMENT RATES FOR 2000 - 2002**

The pole attachment lease rates are as follows:

	2000	2002
100% SCL Pole	\$14.19	\$14.70
City Light/US West	\$ 7.09	\$ 7.35
City Light/US West/Metro	\$ 4.73	\$ 4.90

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### APPENDIX B

#### POLE ATTACHMENT APPLICATION AND PERMIT

Seattle City Light  
700 Fifth Avenue  
Suite 3644, Attn: Betty Tobin  
Seattle, WA 98104-5031

In accordance with the terms of the Agreement between us, dated \_\_\_\_\_,  
20\_\_\_\_, application is hereby submitted for a permit to make attachment to \_\_\_\_\_  
poles, as follows:

City Light Map and Pole No.	Pole Location	Type of Attachment	Area Name
--------------------------------	---------------	-----------------------	-----------

**\*\*\*City Light final inspection is required. Please notify City Light in writing within  
15 days after this project is completed. \*\*\***

Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

Company: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_

Marked location map attached. Attach additional sheets of locations/numbers as needed.

#### **PERMIT**

Tag Letter: \_\_\_\_\_

SUB # \_\_\_\_\_ is hereby granted for attachment to above poles as shown, and/or corrected, on  
the list and map.

For applicants without Master Pole Attachment Agreements, permission to attach may be  
revoked by the Department 180 days after providing written notice to the applicant.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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### **APPENDIX E**

#### **MAKE READY WORK**

1. Definitions

Make Ready Work - Work required to provide attachment and construction space on City poles for communication facilities.

2. Procedure

a. Company shall submit a proposed route for City review.

b. If City review shows a need for Make Ready work in order to provide space on pole(s) for company's use, City shall prepare an estimate of City's cost to perform Make Ready work and submit the estimate to Company for their approval prior to start of any Make Ready work.

Nothing in this addendum shall prohibit Company from proposing alternate routes to avoid make ready work.

3. Restrictions

Tree trimming shall be performed exclusively by the City.

City shall not install cross arms to provide space for communications. City shall not replace poles to provide space for communications except under the following conditions:

a. The pole in question does not meet current standards for height.

b. If the pole in question must be replaced due to poor condition, then replacement with a standard height pole will be at City's expense. If the pole is not in condition to warrant replacement, then replacement with a standard height pole will be at Company's expense.

c. The new pole cannot be taller than a replacement pole would be if increased communication space were not a factor in calculating the pole height.

City shall be solely responsible for determining height standards and condition of poles.

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This addendum does not apply to make ready work that must be performed by other entities that may be attached to the pole(s). Arrangements for that work shall be the responsibility of Company.